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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 724

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, ET AL.,
Appellants,

vs.

SOUTHERN COAL & COKE COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

STATEMENT AS TO JURISDICTION.

ALBERT A. CARMICHAEL,
Attorney General of Alabama;
CHAS. L. ROWE,
Assistant Attorney General;
PEYTON D. BIBB,
Special Assistant of the Attorney General;
NICHOLAS E. STALLWORTH,
Counsel for Appellants.

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IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA

IN EQUITY.

No. 691

SOUTHERN COAL & COKE COMPANY, A CORPORATION,
Plaintiff, Appellee,

vs.

ALBERT A. CARMICHAEL, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF ALABAMA, AND J. L. KAUFMAN, INDIVIDUALLY AND AS CHAIRMAN AND A MEMBER OF THE UNEMPLOYMENT COMPENSATION COMMISSION OF THE STATE OF ALABAMA, AND LUCIEN C. BROWN AND JAMES A. LIPSCOMB, EACH INDIVIDUALLY, AND AS MEMBERS OF SAID UNEMPLOYMENT COMPENSATION COMMISSION, AND BIBB GRAVES, INDIVIDUALLY AND AS GOVERNOR OF THE STATE OF ALABAMA,

Defendants, Appellants.

BEFORE THE HONORABLES SAMUEL H. SIBLEY, CIRCUIT JUDGE, AND ROBERT T. ERVIN AND CHAS. B. KENNAMER, DISTRICT JUDGES, COMPOSING THE COURT CONSISTING OF THREE JUDGES UNDER SECTION 380 OF TITLE 28 OF THE UNITED STATES CODE ANNOTATED. (JUDICIAL CODE SECTION 266 AS AMENDED.)

STATEMENT AS TO JURISDICTION.

The jurisdiction of the Supreme Court of the United States upon appeal is invoked under Sections 238 and 266 of the Judicial Code as amended by the Act of February

13, 1925, c. 229, Section 1 (43 Stat. 938) (United States Code Ann., Title 28, Sections 345 and 380). The final decree of the Three-Judge District Court was entered December 15, 1936. Application for appeal is herewith presented on the 20th day of January, 1937.

The statute of the State of Alabama, the validity of which is involved, is the Alabama Unemployment Compensation Law: General Acts of Alabama of 1935, page 950, as amended by Act No. 156, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 175; by Act No. 194, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 225, and by Act No. 195, approved April 21, 1936, General Acts of Alabama, Special Session 1936, page 228. As so amended the Alabama Unemployment Compensation Law reads, in pertinent parts, as follows:

"SECTION 1. *Short Title.*—This Act shall be known and may be cited as the 'Unemployment Compensation Law'.

"SECTION 2. *Definitions.*—The following words and phrases, as used in this Act, shall have the following meanings unless the context clearly requires otherwise:

"(a) 'Benefits' means the money payable to an employee as compensation for his wage losses due to unemployment as provided in this Act.

"(b) 'Commission' means the Unemployment Compensation Commission established by this Act, or its authorized representative.

"(c) 'Contributions' means the money payments to the State Unemployment Compensation Fund required by this Act.

"(d) Eligibility. An employee shall be deemed 'eligible' for benefits for any given week of his partial or total unemployment (occurring subsequent to any required waiting period) only when he is not disqualified

by any provision of this Act from receiving benefits for such week of unemployment.

"(e) 'Employee' means any person employed by an employer subject to this Act and in employment subject to this act.

"(f) 'Employer' means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent calendar year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs. In determining whether an employer (of any person in the state) employs enough persons to be an 'employer' subject hereto, and in determining for what contributions he is liable hereunder, he shall whenever he contracts with any contractor or subcontractor for any work which is part of his usual trade, occupation, profession, or business, be deemed to employ all persons employed by such contractor or subcontractor on such work, and he alone shall be liable for the contributions measured by wages paid to such persons for such work; except as any such contractor or subcontractor, who would in absence of the foregoing provisions be liable to pay said contributions, accepts exclusive liability for said contributions, under an agreement with such employer made pursuant to general commission rules. All persons thus employed by an employer (or any person) within the state, in all of his several places of employment maintained within the state, shall be treated as employed by a single 'employer' for the purposes of this Act; provided, moreover, that where any person, partnership, association, corporation, whether domestic or foreign, or the legal

representative, trustee in bankruptcy, receiver, or trustee thereof or the legal representative of a deceased person either directly or through a holding company or otherwise, has a majority control or ownership of otherwise separate business enterprises employing persons in the state, all such enterprises shall be treated as a single 'employer' for the purposes of this Act. Any employer subject to this Act shall cease to be subject hereto only upon a written application by him after a finding by the commission that he has not within any calendar week within the last completed calendar year employed eight or more persons in employment subject hereto. Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission.

"(g) 'Employment' means any employment in which all or the greater part of the person's work (within the continental United States) is or was customarily performed within this State, under any contract of hire, oral or written, express or implied, whether such person was hired and paid directly by the employer or through any other person employed by the employer, provided the employer had actual or constructive knowledge of such contract. Such employment shall include the person's entire employment (in all states, including the District of Columbia). In the case of all other persons employed partly in this state and partly in other states, the commission is authorized, with the approval of the Governor, to enter into reciprocal arrangements with other states as to the extent the employment of such persons shall be included under this definition. The term 'employment' shall not apply to:

"(1) Agricultural labor;

"(2) Domestic service in a private home;

"(3) Service performed as an officer, bar pilot, or member of the crew of a vessel on the navigable waters of the United States;

"(4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

"(5) Service performed in the employ of the United States Government or of an instrumentality of the United States;

"(6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as The Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as solicitors or agents for Insurance Companies;

"(7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions;

"(8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

"(h) 'Employment Office' means that free public employment office (operated by the state) or branch thereof nearest to the employee's place of residence or employment, unless otherwise prescribed by the commission.

"(i) An employee's 'full-time weekly wage' means the weekly earnings such employee would average from his employment if employed at the 'hourly rate of earnings' and for the 'full-time weekly hours' applicable to such employee.

"(1) The applicable 'hourly rate of earnings' shall be determined by averaging the employee's actual earnings for at least three hundred hours of employment by his most recent employers.

"(2) An employee's 'full-time weekly hours' shall mean the standard maximum weekly hours which can lawfully be worked by the employee (in the employment in question) under any code of fair competition or under any applicable state law specifying lower maximum weekly hours or agreement. Where there is no code, law or agreement applicable, the commission shall determine the employee's full-time weekly hours by averaging his weekly hours for all calendar weeks (in at least the past three months) in which he worked thirty hours or more, or by such equitable method as the commission may by general rule prescribe for determining a full-time standard of not less than thirty weekly hours for benefit purposes. In the case of an employee who is found by the commission, at the time he becomes eligible for benefits, to be unable by reason of physical disability or by reason of continuing personal obligations (other than employment) to work half the full-time weekly hours which prevail in such establishment for full-time employees, the commission shall determine his full time weekly hours for benefit purposes by averaging his weekly hours for all weeks (in at least the past three months) in which he worked.

"(j) 'Fund' means the Unemployment Compensation Fund established by this Act, to which all contributions and from which all benefits required under this Act shall be paid.

"(k) 'Partial Unemployment'.—An employee shall be deemed 'partially unemployed' in any calendar week of partial work if he fails to earn in wages (and/or any other pay for personal services, including net earnings from self-employment) for such week at least one dollar more than the amount of weekly benefits for total unemployment he might receive if totally unemployed and eligible.

"(l) 'Payroll' means the total amount of all wages payable by the employer to his employees, commencing with wages payable for employment occurring after the employer becomes a newly subject to this Act.

"(m) 'Total Unemployment'.—An employee shall be deemed 'totally unemployed' in any calendar week in which he performs no wage-earning services whatsoever, and for which he earns no wages (and no other pay for personal services, including net earnings from self-employment), and in which he cannot reasonably return to any self-employment in which he has customarily been engaged.

"(n) 'Unemployment Administration Fund' means the Unemployment Compensation Administration Fund established by this Act.

"(o) 'Wages' means every form of remuneration for employment received by a person from his employer, whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, payments in kind, and similar advantages.

"(p) 'Waiting-period-unit' means a period (for which no benefits are payable but during which the employee is in all other respects eligible) consisting of either one week of total unemployment or two weeks of partial unemployment, required as a condition precedent to the receipt of benefits for subsequent unemployment, as prescribed in this Act.

"(q) 'Weeks' means calendar week ending at midnight Saturday, or any equivalent period approved by the Commission.

"SECTION 2(r). 'Week of employment' means each calendar week occurring at least one year after contributions first became generally due under this Act from employers then subject hereto, within which the person in question performed any employment subject to this Act for any employer or employers subject to

this Act and was not partially unemployed as defined in Section (2k).

'SECTION 3. *Unemployment Compensation Fund.*—(a) Fund. There is hereby created the Unemployment Compensation Fund, to be administered by the commission without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions and money paid into and received by the fund as provided by this Act, of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned upon the moneys belonging to the fund.

"(b) Withdrawals.—The fund shall be administered in trust and used solely to pay benefits, upon vouchers drawn on the fund by the commission pursuant to general commission rules and no other disbursement shall be made therefrom. Such rule shall be governed by and consistent with any applicable constitutional requirements, but the procedure prescribed by such rules shall be deemed to satisfy (and shall be in lieu of) any and all statutory requirements (for specific appropriation or other formal release by state officers of state moneys prior to their expenditure) which might otherwise be applicable to withdrawals from the fund.

"(c) Treasurer.—The commission shall designate a treasurer of the fund, who shall pay all vouchers duly drawn upon the fund, in such manner as the commission may prescribe. He shall have custody of all moneys belonging to the fund and not otherwise held or deposited or invested pursuant to this act. The treasurer shall give bond conditioned on the faithful performance of his duties as treasurer of the fund, in a form prescribed by statute or approved by the attorney general, and in an amount specified by the commission and approved by the governor. All premiums upon bonds required pursuant to this section when furnished by an authorized surety company or by a duly consfituted governmental bonding fund shall be paid from the unemployment administration fund. The

treasurer shall deposit and/or invest the fund under the supervision and control of the commission, subject to the provisions of this Act.

"(d) Deposit.—All contributions paid under this Act shall upon collection be deposited in or invested in the obligations of the 'Unemployment Trust Fund' of the United States Government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commission shall requisition from the Unemployment Trust Fund necessary amounts from time to time.

"SECTION 4. *Contributions.*—(a) Payment. On and after the first day of January, 1936, contributions shall accrue and become payable by each employer then subject to this act. Thereafter contributions shall accrue and become payable by any new employer on and after the date on which he becomes newly subject to this act. The contributions required hereunder shall be paid by each employer in such manner and at such times as the commission may prescribe.

"(b) Rates of Contributions. Every employer shall pay contributions equal to the following percentages of the total wages payable (regardless of the time of payment) with respect to employment by him during such month:

"(1) With respect to employment during the calendar year 1936 the rate shall be ninety-one-hundredths (.90) of one per centum;

"(2) With respect to employment during the calendar year 1937 the rate shall be one and eighty one-hundredths (1.80) of per centum;

"(3) With respect to employment during the calendar year 1938 and thereafter the rate shall be two and seventy one-hundredths (2.70) of per centum.

"(c) Future Rates, Based on Benefit Experience. Based on the actual contribution and benefit experience of employers under this act, the commission shall (in

the year 1941 and in each calendar year thereafter) classify employers in accordance with said experience; and shall determine for each employer the rate of contribution which shall apply to him throughout the calendar year, pursuant to said experience and classification. The minimum contributions thus payable to the fund shall in no case amount to less than one and one-half (1½%) per centum or more than four (4%) per centum on the employer's payroll, and the average contribution rate of all employers shall be approximately three (3%) per centum (on payroll) for any calendar year. An employer's contribution rate shall in no case be reduced until there has been at least three calendar years throughout which his employees received or could have received benefits when and if unemployed and eligible. The commission shall investigate and classify industries, employers, and/or occupations with respect to the degree of unemployment hazard in each, taking due account of any relevant and measurable factors, and shall have power to apply any form of classification or rating system which in its judgment is best calculated to rate individually the unemployment risk most equitably for each employer or group of employers and to encourage the stabilization of employment. The general basis of classification proposed to be used for any calendar year shall be subject to discussion, adoption and publication in the manner prescribed in this act for all general commission rules.

"(d) 'Contributions by Employees'.—Each employee shall contribute to the fund one per centum of his wages earned after May 1st, 1936 and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contributions from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules.

"SECTION 5. *Benefits*—(a) Payment of Benefits. After contributions have been due under this act for two years, benefits shall become payable from the fund to any employee who thereafter is or becomes unemployed and eligible for benefits, based on his weeks of employment as defined in this act, and shall be paid through the employment offices at such times and in such manner as the commission may prescribe.

"(b) Weekly Benefits for Total Unemployment.—An employee totally unemployed and eligible in any week shall be paid benefits (computed to the nearest half-dollar) at the rate of fifty per centum of his full-time weekly wage with maximum benefits of $15.00 per week.

"(c) Weekly Benefits for Partial Unemployment.—An employee partially unemployed and eligible in any week shall be paid sufficient benefits so that his week's wages, (and/or any other pay for personal services, including net-earnings from self-employment and his benefits combined will be two dollars more than the weekly benefit to which he would be entitled if totally unemployed in that week.)

"(d) One-to-Four Ratio of Benefits to Employment.—The aggregate amount of benefits an employee may at any time receive shall be limited by the number of his past weeks of employment against which benefits have not yet been charged hereunder. Each employee's benefits shall be thus charged against his most recent weeks of employment available for this purpose. Each employee shall receive benefits in the ratio of one-quarter week of total unemployment benefits (or an equivalent amount, as determined by general commission rules, of benefits for partial unemployment or for partial and total unemployment combined) to each week of employment of such employee occurring within the 104 weeks preceding the close of the employee's most recent week of employment.

"(e) Maximum Weeks of Benefit in Any Year.—Benefits shall be paid each employee for the weeks dur-

ing which he is totally or partially unemployed and eligible for benefits, based on his past weeks of employment; but not more than sixteen (16) weeks of total unemployment benefits (or an equivalent total amount, as determined by commission rules, of benefits for partial unemployment or for partial and total unemployment combined) shall be paid any employee for his weeks of unemployment occurring within any fifty-two (52) consecutive weeks.

"(f) Additional Benefits (One-to-Twenty Ratio).—An eligible employee who has received the maximum benefits permitted under subsection (e) shall receive additional benefits in the ratio of one week of total unemployment benefit (or its equivalent) to each unit of twenty aggregate weeks of employment occurring within the 260 weeks preceding the close of the employee's most recent week of employment, and against which benefits have not already been charged under this act. Such additional benefits shall be charged against the employee's earliest weeks of employment available for this purpose.

"SECTION 6. *Benefits Eligibility Conditions.*—(a) Employment Requirement. An employee shall be deemed eligible for benefits for any given week of his unemployment only if he has either

(1) Accumulated 40 weeks of employment subject hereto within the 104 weeks immediately preceding the date of his application for benefits, or

(2) Accumulated 26 weeks of employment subject hereto within the 52 weeks immediately preceding the date of his application for benefits.

(b) Availability and Registration for Work. An employee shall not be eligible for benefits in any week of his partial or total unemployment unless in such week he is physically able to work and available for work, whenever duly called for work through the employment office. To prove such availability for work, every employee partially or totally unemployed shall register

for work and shall file claim for benefits at the employment office, within such time limits and with such frequency and in such manner (in person or in writing) as the commission may by general rule prescribe. No employee shall be eligible for benefits for any week in which he fails without good cause to comply with such registration and filing requirements. A copy of the commission's rules covering such requirements shall be furnished by it to each employer who shall inform his employees of the terms thereof when they become unemployed.

"(c) Waiting Period. Benefits shall be payable to an employee only for his weeks of unemployment occurring subsequent to a 'waiting period', whose duration shall in each case be determined as follows: An aggregate of three (3) waiting-period-units shall be required of the employee within the fifty-two (52) weeks preceding the start of any given week of unemployment. There shall not be counted toward an employee's required waiting period or periods any week of total or partial unemployment in which he is ineligible for benefits under subsection (b), (d), (e), (f), (g) of this section.

"(d) During Trade Disputes.—An employee shall not be eligible for benefits for any week in which his total or partial unemployment is directly due to a labor dispute still in active progress in the establishment in which he is or was last employed.

"(e) Voluntary Leaving.—An employee who has left his employment voluntarily without good cause connected with such employment shall be ineligible for benefits for the week in which such leaving occurred and for the three next following weeks.

"(f) Discharge for Misconduct.—An employee who has been discharged for proved misconduct connected with his employment shall thereby become ineligible for benefits for the week in which such discharge occurred and for not less than the three nor more than six next following weeks, as determined by the commission in each individual case.

"(g) Refusal of Suitable Employment.—If an otherwise eligible employee fails, without good cause either to apply for suitable employment when notified by the employment office, or to accept suitable employment when offered him, he shall thereby become ineligible for benefits for the week in which such failure occurred and for the three next following weeks. 'Suitable employment' shall mean any employment for which the employee in question is reasonably fitted, which is located within a reasonable distance of his residence or last employment, and which is not detrimental to his health, safety or morals. No employment shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible employee for refusing to accept new work, under any of the following conditions:

"(1) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

"(2) if the wages, hours, and other conditions of the work offered are substantially less favorable to the employee than those prevailing for similar work in the locality;

"(3) if acceptance of such employment would either require the employee to join a company union or would interfere with his joining or retaining membership in any bona fide labor organization."

Sections 9 and 10 provided for the creation of the Alabama Unemployment Compensation Commission, which is authorized and directed to administer the Act and to adopt such general rules and regulations as might be necessary to the enforcement of its provisions.

The plaintiff, the Southern Coal & Coke Company, a corporation, engaged in the business of mining and preparing coal for market and employing more than eight persons in the State of Alabama, filed its bill of complaint against the defendants, who are the officials of the State of Alabama charged with the administration and enforcement of the

Alabama Unemployment Compensation Law. The bill prayed, and the plaintiff made application, for an interlocutory injunction suspending and restraining the enforcement, operation or execution of the said Alabama Unemployment Compensation Law by restraining the actions of the defendants and each of them from the enforcement or execution of said Law in so far as said Law imposes upon the plaintiff the obligation of paying the contributions required of it by the terms of the Law, and in so far as the said Law requires the plaintiff to deduct from the wages of its employees and to pay to the Commission the amount of the contributions required by the Law from the plaintiff's employees. The bill further prayed that upon final hearing a permanent injunction of like effect be issued and granted against the defendants.

The application for an interlocutory injunction, as well as the prayer for a permanent injunction, was based upon the alleged unconstitutionality of the said Alabama Unemployment Compensation Law. The plaintiff, by its bill of complaint, contended that the effect of the said Law in requiring contributions to be paid by it and its employees to be used for the purposes set out in the Law, deprived the plaintiff of its property without due process of law, unlawfully interfered with the plaintiff's freedom of contract, and that the provisions of the law were so arbitrary, unreasonable and capricious as to deny to the plaintiff the equal protection of the law, all within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Upon presentation of the bill, the District Judge granted a temporary restraining order which was by appropriate orders maintained in force until the convening of the Three-Judge Court, who continued it in effect until the final decree was rendered.

The facts alleged and admitted of record show that the plaintiff is, and during the whole of 1936 and for years pre-

viously has been, engaged in the mining and preparation of coal for market in the State of Alabama in intrastate commerce, that it employs and has employed more than eight persons therein, and that its business is, to a substantial extent, seasonable in nature.

The defendants by their answer and on the trial insisted that the enactment of the Alabama Unemployment Compensation Law was a proper exercise of the police power of the State of Alabama, that it was neither arbitrary, unreasonable nor capricious, and that it did not deny the plaintiff the equal protection of the laws nor deprive the plaintiff of its property without due process of law nor did it interfere with the plaintiff's right of contract.

There were other collateral issues involved in the suit under the Constitution of the State of Alabama and otherwise not necessary to be stated as a basis for the jurisdiction of the Supreme Court of the United States.

The application for the interlocutory injunction was presented to the Hon. Charles B. Kennamer, Judge of the District Court of the United States for the Middle District of Alabama, who called to his assistance to hear and determine the application of plaintiff for an interlocutory injunction in the premises, two other Judges as required by Section 266 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, Section 1 (United States Code, Ann., Title 28, Section 380) viz: the Hon. Samuel H. Sibley, Judge of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, and the Hon. Robert T. Ervin, Judge of the District Court of the United States for the Southern District of Alabama.

The cause was submitted on the plaintiff's application for an interlocutory injunction as prayed in its bill of complaint, upon the other pleadings filed in said cause and upon stipulation of counsel and the evidence introduced by each of the parties. Without the plaintiff in any way waiving its in-

sistence on its application for an interlocutory injunction, the cause was at the same time also submitted for final decree upon the same pleadings and upon the same evidence introduced by the parties upon the hearing of plaintiff's application for an interlocutory injunction.

Upon final decree the Three-Judge District Court by unanimous opinion held that the said Alabama Unemployment Compensation Act was unconstitutional and void, and on December 15, 1936, filed in this cause its decree as follows:

> "This cause came on to be heard upon a motion for an interlocutory injunction and for a final decree before a Court composed of Honorable Samuel H. Sibley, Circuit Judge, Honorable C. B. Kennamer, District Judge, and Honorable Robert T. Ervin, District Judge, and was submitted upon the pleadings and upon the evidence introduced, and the argument of counsel for the parties. The Court having taken time to consider, and being now fully advised, it is considered and adjudged that the defendants and each of them, in their individual and official capacities, be enjoined pending the final determination of this cause from enforcing against complainant the Act described in the petition and passed by the Legislature of the State of Alabama, approved September 14, 1935, as amended, and known as the Alabama Unemployment Compensation Law, by requiring contributions or reports thereunder or by exacting penalties, fines, taxes or imprisonment because thereof, and from doing any act by themselves or their agents or representatives in the enforcement of said Act. This injunction is to be effective upon the complainant filing a bond in the sum of Ten Thousand ($10,000) Dollars, conditioned as by the statute in this regard required.
>
> "And upon further consideration, and by way of final decree, in pursuance of the Findings of Fact and the Conclusions of Law filed herewith, it is considered and adjudged that the defendants and each of them in

their individual and official capacities, their agents and representatives, are perpetually enjoined from enforcing said Act against complainant in any way by requiring contributions, reports or otherwise, or by exacting fines, penalties or other punishments because of a failure to comply with said Act, the said Act being held and declared to be unconstitutional and void because in conflict with the Fourteenth Amendment of the Constitution of the United States and of Article 1, Section 23, of the Constitution of Alabama.

"This decree signed this December 15, 1936."

Upon the filing of its final decree the Three-Judge District Court also filed its conclusions of law as follows:

"*Conclusion of Law.*

1. The Court has jurisdiction, both federal and equitable.

2. The evils of unemployment are such as to be taken cognizance of under the police powers of the States and to authorize a remedy which is not forbidden by the Constitutions.

3. Compulsory insurance against unemployment though a new remedy in the United States of America is a possible one. Recognizing the troubles that have come from allowing the capitalist to hire the worker, it could be considered as a regulation, operating in future, conditioning the right to engage in such hiring. But the right to work for a wage, or to hire another, is among the fundamental liberties of the country and they cannot be arbitrarily narrowed or taken away. See Adkins *vs.* Children's Hospital, 261 U. S. 525. Whether the requirement of this insurance and the payments to support it be arbitrary or not depends on the state of society at the time and the urgency of the need for the regulation. Of such things the legislature is the primary judge. Several businesses, such as motor-carriage, have been required to carry insurance. Marriage in Alabama could formerly be contracted only on giving a bond. We are not required in this case to

give an opinion on this broad question of police power, because this legislation must fall on a narrower point.

4. If an insurance Act like this could stand up which either covered all employments (not excepted for valid reasons), or which classified employments so closely as to escape arbitrary imposition of burdens, (see Mountain Timber Co. *vs.* Washington, 243 U. S. 219), the present Act denies due process in that the classification of employers having eight or more employees is entirely arbitrary. Whether viewed from the standpoint of employers or employees there is no reason for the distinction made, and equal protection of the law is not afforded either to employers or employees. Colgate *vs.* Harvey, 296 U. S. 404, 423, 425.

5. The requirement that employers pay about two-thirds of the contribution to the general fund for the direct benefit of the unemployed with no direct benefit to themselves violates the provisions of Art. I, Sec. 23, of the Alabama Constitution. Robertson *vs.* Collins, 218 Ala. 54.

6. The Social Security Act, supposing it to be valid, did not operate either to coerce or bribe the Alabama Legislature so as to impair the validity of their legislative action. The motives of legislators cannot at the instance of private litigants be inquired into by courts. Fletcher *vs.* Peck, 6 Cranch. 87, 130, 131; United States *vs.* Des Moines R. R. Co., 142 U. S. 545; Angle *vs.* Chicago R. R. Co., 151 U. S. 17; Cooley Const. Lims. (8 Ed.), p. 379, 380.

7. The Alabama Act being disposed of because the Court finds it to be violative of the Constitution of the United States and that of Alabama, it is unnecessary for this Court to pass on the constitutionality of the Federal Act. (Tennessee Publishing Company, Petitioner, *vs.* American National Bank, decided by the Supreme Court of the United States, November 9th, 1936.) We make no decision and express no opinion as to the constitutionality of the Federal Act.

Chamberlin, Inc. *vs.* Andrews, 271 N. Y. 1, affirmed

by an equal division of the Supreme Court of the United States, is of no authority on the federal questions involved. Hertz, *vs.* Woodmen, 218 U. S. 205.

SAM'L H. SIBLEY,
Circuit Judge.
ROBERT T. ERVIN,
U. S. District Judge.
CHARLES B. KENNAMER,
U. S. District Judge."

The plaintiff pressed its application for an interlocutory injunction, but as final decree was being entered in the cause, the Court found it unnecessary to grant or act separately on plaintiff's application for an interlocutory injunction, except as appears in the terms of its final decree.

The appeal prayed for is to the Supreme Court of the United States from the final decree granting a permanent injunction, and is provided for by Judicial Code, Section 266, as amended by the Act of February 13, 1925, c. 229, Section 1 (43 Stat. 938, 28 U. S. C. A. Section 380).

Cases pleaded to sustain the jurisdiction of the Supreme Court of the United States are:

T. L. Smith et al. v. *Wilson et al.*, 273 U. S. 388;
Stratton v. *St. Louis S. W. Ry. Co.*, 282 U. S. 10, 31 Sup. Ct. 8, 75 L. Ed. 135;
Brucker v. *Fisher*, 49 F. (2d) 759.

Respectfully submitted,

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